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Premium

India's undertrial prisoners

What does Section 479 of the BNSS, which provides relaxed bail standards for first-time offenders, state? What has the Supreme Court said on the matter? What is the status of undertrial prisoners in India?

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Prisoners at the Yerwada Central Jail in Pune. (Express photo by Pavan Khengre)

Union Home Minister Amit Shah on Tuesday said that undertrials who have spent more than a third of the maximum prescribed sentence for the crime they are accused of committing should be released before Constitution Day (November 26).

Highlighting the new relaxed provisions on bail for first-time offenders in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), Shah said: “Samvidhaan Din se pehle, yeh desh ke jailon mein ek bhi kaidi aisa na ho jisne apni ek tihayee sazaa kaat li hai aur abhi usko nyay nahi mila hai. (Before Constitution Day, we want to make sure there isn't a single prisoner in the jails of India who has spent one third of his sentence in prison and still hasn't received justice.)”

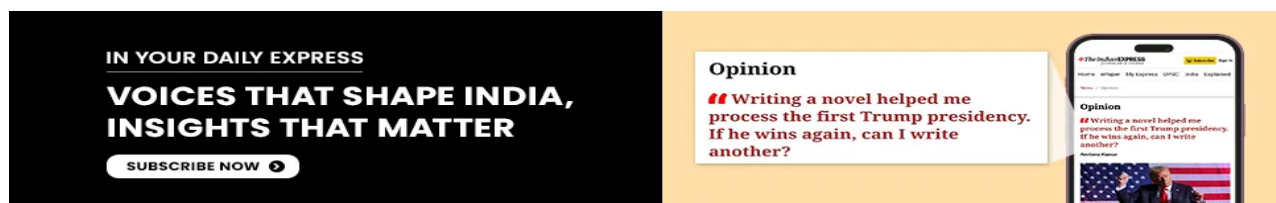
What does Section 479 of the BNSS, which provides relaxed bail standards for first-time offenders, state? What has the Supreme Court said on the matter? And what is the state of undertrials in India?

Section 479 of the BNSS

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Section 479 of the BNSS lays down the “Maximum period for which [an] undertrial prisoner can be detained”.

It states that a prisoner who is not accused of offences punishable with death or life imprisonment shall be released on bail if she has “undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law”.



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This same standard was provided under the previously applicable Section 436A of the Code of Criminal Procedure, 1973 (CrPC).

But the BNSS has also relaxed the standard further in cases concerning “first-time offenders” — requiring such accused persons to be released on bail after they have spent one-third of the maximum possible sentence in prison.

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It states, “Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law”.

The provision, however, clarifies that an accused “shall not be released on bail by the Court” if there are pending investigations or trials into more than one offence

or in “multiple cases” relating to the same person.

Top court's interpretation

In August, a Bench of Justices Hima Kohli and Sandeep Mehta held hearings on the issues faced by undertrial prisoners in the case *In re: Inhuman conditions in 1382 prisons*.

The case began as a PIL after former Chief Justice of India R C Lahoti sent a letter to the court, highlighting issues such as overcrowding in prisons, unnatural deaths of prisoners, and the inadequacy of trained prison staff. Since 2013, the court has been hearing issues relating to prisons in this case.

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Senior Advocate and amicus curiae (‘friend of the court’ appointed by the Bench to assist the court) Gaurav Agrawal submitted on August 13 that Section 479 of the BNSS “needs to be implemented at the earliest and it will help in addressing overcrowding in prisons”.

Noting that the new provision was “more beneficial”, the court on August 23 ordered that Section 479 would apply “retrospectively” to cases that were registered against first-time offenders even before the BNSS came into effect on July 1, 2024.

Additional Solicitor General Aishwarya Bhati communicated the Centre’s agreement to this measure before the order was passed.

The court ordered all state governments and Union Territories to file affidavits within two months detailing “the number of undertrials who would be entitled to extension of the benefit of Section 479 of the BNSS, the number of applications moved before the concerned Courts for their release and the number of undertrials actually released by the date of filing of the affidavits”.

The court also ordered jail superintendents to send reports with this data so that the states and UTs could collect them for their final affidavit.

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Notably, Section 479 already places a duty on the superintendent of the jail to send an application to the court for releasing a person on bail under this section once the

relevant time period — either half or one-third of the maximum sentence — has elapsed.

However, on October 22, a new Bench comprising Justices Hrishikesh Roy and S V N Bhatti noted that only 19 out of the 36 states and Union Territories had filed responses detailing the steps taken to implement the court's August order.

On November 19, the SC once again ordered all jail superintendents to identify all undertrial prisoners, especially women, who would be entitled to bail under Section 479 of the BNSS so that courts can consider granting bail in these cases.

India's undertrial prisoners

According to the National Crime Records Bureau's report Prison Statistics India 2022 (published in December 2023), of the 5,73,220 people incarcerated in Indian prisons, 4,34,302 are undertrials against whom cases are still pending. That amounts to nearly 75.8% of all prisoners in India.

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Of the 23,772 women in prisons, 18,146 (76.33%) are undertrials, the report notes.

The report does not record how many undertrial prisoners were first-time offenders. As of December 31, 2022, around 8.6% of all undertrial prisoners had been in prison for more than three years.

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